THE HON'BLE SRI JUSTICE D.S.R. VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.24739 of 2007

DATED : 23-11-2007

Between :

D. Srihari

...Petitioner.

AND

The Senior Superintendent of Post Offices,
Nizamabad Division,
Nizamabad-517001 and 3 others.

...
Respondents.

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ORAL ORDER : (per the Hon'ble Sri Justice D.S.R. Varma)

Heard Sri M. Venkanna, learned counsel for the petitioner, and the learned Central Government Standing Counsel.

2. This Writ of Certiorari is filed seeking to quash the order of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, (for brevity 'the Tribunal') passed in original application O.A.No.237 of 2006, dated 07-08-2007, dismissing the O.A., which was filed by the petitioner seeking for consideration of

his past service as Postal Assistant, on the ground that he is not entitled to get the benefit of counting the past service as per Rule 26 of C.C.S. (Pension) Rules, 1972 (for brevity 'the Rules'), since he has not applied for the post of Postal Accountant through proper channel.

3. It is the case of the petitioner that he was appointed as Postal Assistant in Postal Department in the year 1993. Subsequently, he applied directly to the post of Junior Accountant in a different wing of the same Department, pursuant to the notification issued by the Staff Selection Commission and got selection as Junior Accountant in the year 1998. Pursuant to his selection as Junior Accountant, he resigned the post of Postal Assistant and joined the new post as Junior Accountant. Thereafter he made a representation to the respondent authorities to consider his past service as Postal Assistant for all purposes, as the resignation tendered by him was only a technical formality. The said request of the petitioner was rejected by first respondent, vide Memo. No.B2/1294/05, dated 15-01-2006, on the ground that the petitioner had not forwarded his application to the Staff Selection Commission through proper channel. Challenging the said rejection orders, the petitioner had approached the Tribunal by way of filing O.A.No.237 of 2006. The Tribunal, after hearing both sides and considering the material on record, by order, dated 07-08-2007, dismissed the O.A., on the ground that the petitioner was not entitled to get the benefit of counting the past service as per Rule 26 of C.C.S. (Pension) Rules, 1972 (for brevity 'the Rules'), since he had not applied for the post of Junior Accountant through proper channel. Aggrieved by the same, the petitioner filed the present writ petition.

4. It is the contention of the learned counsel for the petitioner that the resignation of the petitioner was only a technical

formality for assigning the new post and, therefore, he is entitled to get the benefit of past service.

5. The said contention was repelled by the learned standing counsel for the respondents basing on Rule 26 of the Rules.

6. Learned counsel for the petitioner did not dispute as regards the application of Rule 26 of the Rules.

7. Though the Tribunal had extracted the relevant part of the Government of India Decisions under Rule 26 of the Rules, in the impugned order, still, for the sake of convenience and ready reference, we feel it appropriate to extract the same, which is as under:

> "**(1) When resignation a technical formality and when it subsists:-** A Government servant intending to apply for a post or posts outside his parent office/department under the Government of India should have his application forwarded through the competent authority under whom he was serving at the time of applying for the post. Such an authority should either forward the application or withhold it according as the exigencies of public service may indicate but it should not forward the application conditionally, for example, that in the event of the applicant coming out successful, he will be required to resign his post before taking up the new one. Once the application has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course and the question of his resigning the post held by him in such circumstances should not arise. Accordingly, the amended article is intended to cover the cases where even though the applications were forwarded by the competent authority, the applicant had been asked for one reason or the other to resign his post before taking up the new one. The above position holds good whether the Government servant held the post in permanent or temporary capacity, before resigning the post.
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> Situations may arise where the application of a Government servant was not forwarded and the Government servant resigned his appointment of his own volition with a view to his taking up the new post or where it was not possible to forward his application in the public interest but the Government servant had volunteered to resign his post or where the

> conditions of service in an office demand as a matter of policy that the Government servant should resign his post in the event of his taking up another post outside. In all such cases, it has been held that resignation of public service will subsist and entail forfeiture of past service.
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> It has been decided that in cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'. The pay in such cases may be fixed under FR 27."

8. From the above, it is clear that the first two paragraphs of Government of India Decisions under Rule 26 of the Rules contemplates that on application being made through proper channel, if the applicant was asked to resign for one reason or the other, in either case, the resignation of the public service by the incumbent will subsist and entail forfeiture of past service.

9. In other words, while seeking employment in a different capacity in another post outside the Department, making an application through the competent authority is essential and any resignation would result in forfeiture of the past service.

10. Whereas the third paragraph of the said rule postulates that an application for employment in the same Department to another post shall also be made through proper channel. But, if such an incumbent was asked to resign from the previous post for administrative reasons, then only the benefit of past service is admissible for the purpose of continuity of service and he would be entitled for all benefits of pay in the new post, treating such resignation as a mere technical formality.

11. In the instant case, it is an admitted fact, as recorded by the Tribunal also, that the petitioner has not made the application through proper channel while seeking employment in

the same Department to another post as Junior Accountant. Further more, it is also to be noticed that he resigned from the previous post, which resignation is voluntary, and when his resignation is voluntary, the same cannot be treated as administrative reasons.

12. As already noticed, when his resignation is on administrative reasons, then only such resignation would be treated as a mere technical formality and his past service would be tagged on to the new service.

13. In the instant case, the petitioner was in error – *firstly,* in not making the application through proper channel, and *secondly*, he resigned the previous post unconditionally, which does not amount to resignation on administrative reasons. In such a case, Rule 26 of the Rules, as was relied upon by the Tribunal, in our considered view, is absolutely correct.

14. For the foregoing, there are no merits in the writ petition warranting interference by this Court and the writ petition is liable to be dismissed.

15. In the result, the writ petition is dismissed, at the stage of admission. However, there shall be no order as to costs.

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JUSTICE D.S.R.VARMA

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JUSTICE K.C. BHANU

23-11-2007
Msr.

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